objection; and his evidence in this respect was not challenged.

For the dealer, learned Counsel argued that Exh. P6, the receipt for the payment of RM500 was not proved in that the maker thereof was not called. According to the notes of proceedings, Exh. P6 was admitted in evidence "with no objection from defendant's solicitor" (see page 18 of the Appeal Record). In any event, there is ample credible evidence from the customer justifying the award of the sum RM500. I see no reason for disagreeing with it.

For the reason given, the appeal is dismissed with costs to be paid by the dealer (the appellant) to the customer (the respondent). In the absence of an agreement, such costs are to be taxed.

IBRAHIM BIN HASHIM

v.

BANK BUMIPUTRA MALAYSIA BERHAD

HIGH COURT MALAYA, SHAH ALAM
DATO' RANITA HUSSEIN JC
[CIVIL SUIT NO. 22-518-92]
8 JUNE 1994

INJUNCTION: Locus Standi - Whether son has locus standi to maintain an application for injunction against auction sale of charged property in father's name - Whether illegality can be raised at the hearing without being pleaded in the affidavit - Effect of delay of 5 years in seeking injunction - Application of s. 260(2) National Land Code.

The plaintiff's father had availed of banking facilities from the defendant bank. He had charged two pieces of land in Sabak Bernam as security for the facilities. The defendant bank had in accordance with s. 260(2) of the National Land Code made a demand for payment in Form 16 E addressed to the chargor and thereafter made an application in Form 16 G to the Land Administrator and obtained an order for sale on 5 May 1987. The plaintiff applied for an injunction on 31 July 1992 to restrain the auctioning of the two pieces of land.

The plaintiff contented that the loan has been discharged by him at the request of his father and that the order for sale is tainted by illegality as the bank had not served the letter of demand on the chargor. The alleged illegality was not pleaded in the affidavit.

The bank stated that the plaintiff does not have *locus standi* to maintain the application for an injunction. Further the issue of delay also was raised in defence.

Held:

[1] The plaintiff has failed to show what his interest in the matter is either in the statement of claim or the affidavits filed in support of the injunction application. That he is the son of the chargor, in the absence of any other evidence, does not entitle him to any equitable or legal interest in the lands. The land is in his father's name, and the privity of the contract, in respect of the charge is between the father and the bank. The plaintiff has no *locus standi* to maintain the application for an injunction.

[2] In any event the records of the Collector of Land Revenue disclose that the demand was made in Form 16 E on the chargor and an application was made thereafter to the Land Administrator in Form 16 G. Though illegality has not been pleaded it may be taken into account by the Court. Section 260(2) of the National Land Code having been complied with there is no illegality as contended by the plaintiff.

[3] Further, the explanation that the plaintiff came to know of the order for sale only on 31 July 1992 is not satisfactory to explain the delay of 5 years in making the application.

[Application dismissed with costs].

Cases referred to:
Tan Sri Othman Saat v. Mohamed bin Ismail [1982] 2 MLJ 177 ***(foll)***
Mok Hin Wah & Ors. v. United Malayan Banking Corp. Bhd. [1987] 2 MLJ 610 ***(refd)***
Cocoa Processors Sdn. Bhd. v. United Malayan Banking Corporation Bhd. & Ors. [1988] 3 MLJ 491 ***(refd)***

Legislation referred to:
National Land Code 1965, s. 260(2)

For the plaintiff- S.K. Kanawagi; M/s. Khana & Co.
For the defendant-Cheryl Nicholas; M/s. Nordin Torji & Yusoff Ahmad

JUDGMENT

Ranita Hussein JC:
This is an application for an injunction against the defendant, to restrain it from auctioning off two pieces of land in Sabak Bernam until the determination of the suit.

The following facts were undisputed:

> The defendant is the chargee of two pieces of land, EMR 4726 Lot 2263 and EMR 4773 Lot 2268 in the Mukim of Sabak Bernam, Selangor. The said lands are registered in the name of the plaintiff's father, Hashim bin Omar. The lands were charged by the plaintiff's father to the defendant as security for certain financial facilities given to a company, Syarikat Benaan Haji Idris Sdn.Bhd.. The plaintiff paid the defendant RM10,000 on 2 August 1986 and RM3,300 on 24 March 1987. On 5 May 1987 the defendant obtained an order for sale from the Collector of Land Revenue, Sungei Besar, Sabak Bernam to sell the two properties.

The plaintiff avers that he made the payments to settle his father's debt at his father's request. He further alleges that the defendant, particularly, Haji Murad bin Bustaman, the then Branch Manager of the defendant's Kampong Baru Branch, had represented to him that his father's debt amounted to RM13,300 whereupon he had paid that sum in full and final settlement of such debt.

The defendant in turn questions the plaintiff's interest in the subject matter and challenges his *locus standi*. In any event the defendant avers that the facilities given to the plaintiff's father was an overdraft of RM15,000, a bank guarantee of RM65,000 and Trust Receipts of RM25,000. The Bank Guarantee was unused and thus cancelled while the overdraft was settled on 24 March 1987. However, according to the defendant, the facility under the Trust Receipt was still outstanding and as at 30 November 1991 the amount claimed was RM59,622.10.

Locus Standi

The immediate question which needs to be answered is whether the plaintiff has a legal or equitable right in the matter on which he could found a claim for an injunction.

To quote Abdoolcader J. in the Federal Court case of *Tan Sri Othman Saat v. Mohamed bin Ismail* [1982] 2 MLJ 177:

> The sensible approach in the matter of *locus standi* in injunctions and declarations would be that as a matter of jurisdiction - an assertion of an infringement of a contractual or proprietary right, the commission of a tort, a statutory right or breach of statute which affects the plaintiff's interest substantially or where the plaintiff has some genuine interest in having his legal position declared, even though he could get no other relief, should suffice.

In the present case, the plaintiff had filed an action against the defendant wherein he prayed for a declaration that the debt of Hashim bin Omar to the defendant has been extinguished. This was accompanied by prayers for an order to set aside the order for sale of the Collector and an order to have the title documents of the relevant pieces of land released to him. However, the plaintiff has not shown, either in the statement of claim or the affidavits in support of his application for an injunction, what his interest in the matter is. Although the plaintiff may be the son of the chargor, Hashim bin Omar, now deceased, that alone, in the absence of any other evidence, does not entitle him to any interest, legal or equitable, in the lands or in the

contract between his father and the defendant. In fact, strangely enough, he did not even reveal his father's death in his affidavits. His only role in the matter seems to be that of an agent of his father who authorised him to pay the defendant a certain sum towards vicarious settlement of his father's debt. This certainly does not confer on him personally any interest, legal or equitable, in the matter. The land remained in his father's name and the privity of contract relating to the security remained between his father and the defendant.

Therefore, on the ground of lack of '*locus standi*' alone I would refuse the injuction.

Illegality

The plaintiff advanced the allegation of illegality at the hearing of the summons in chambers. Though this allegation was not included in his affidavit, the plaintiff submitted that illegality may be taken into account by the Court even if it had not been pleaded. Indeed, there is authority for that proposition in English and Malaysian case-law. This Court will, however, look at it only in the context of whether or not it will support an application for an injunction.

The plaintiff argues on the illegality issue as follows:

(a) Paragraph (1) of the annexure to the charge document requires that a demand be made by the defendant to the chargor;
(b) However, the letter of demand was addresed to the customer (Syarikat Benaan Haji Idris Sdn.Bhd.) and only carbon copied to the chargor. As such, the demand is invalid;
(c) Therefore, the order for sale made by the Collector was a nullity.

The plaintiff further submits that the *locus* he has is to do what justice requires i.e. stop the auction.

I cannot see how this particular plea of 'illegality' can imbue the plaintiff with *locus standi* in this case. Even if no proper demand was sent by the defendant to the chargor, all it amounts to is that, in proceeding to effect the sale of the lands, the defendant had accorded to himself a right which has not yet accrued under the contract with the chargor. This is not a case of a "statutory right or breach of a statute which affects the plaintiff's interest substantially". Moreover, there is no legal position of the plaintiff to be declared. As such, the plaintiff has failed to bring himself within the guidelines of *Tan Sri Othman Saat's* case, aforementioned.

Be that as it may, it befits this Court to be fastidious when questions of illegality are brought up. The issue, in the context of an injunction application, is whether or not the plaintiff's plea has revealed a serious question to be tried.

The notice of demand sent by the defendant (Exhibit A3) is defective in that it is addressed to the customer and carbon copied to the chargor (see *Mok Hin Wah & Ors. v. United Malayan Banking Corp. Bhd.* [1987] 2 MLJ 610). Here, it amounts to non-performance of a condition precedent in the contract between the defendant and the chargor. However, it is relevant to note that this contract is not a contract of guarantee *per se*. It involves security in the form of landed property, disposal of which is subject to the National Land Code. A perusal of the records of the Collector of Land Revenue shows that the order for sale of the relevant lands was preceded by an application for the order by the defendant. Section 260(2) of the National Land Code states that any application for an order for sale by a chargee shall be made to the Land Administrator in Form 16 G. The application under Form 16 G is in turn required to be preceded by a demand for payment *as per* Form 16 E which is addressed to the chargor. There is nothing in the evidence before the Court to suggest that the statutory procedures were not complied with by the defendant in obtaining the order for sale. In the circumstances, I am entitled to regard the notice of demand as having been validly given to the chargor. Such notice would also meet the pre-condition in the annexure to the charge document. Failure by the chargor to comply with the demand gives the chargee the right to sue on the contract or apply for the sale of the land. The order for sale by the Collector in respect of the lands charged by the plaintiff's father was, therefore, validly made. There is, in short, no question to be tried in this matter.

Delay in applying for Injunction

In the light of my decision on the matter of the plaintiff's *locus standi*, I am not beholden to deal with the rest of the evidence adduced by the parties. Nonetheless, I note with some dismay the unusually long time that the plaintiff has taken to seek redress from the Court. The order for sale of the aforesaid lands was obtained on

5 May 1987. Yet, the plaintiff did not file a suit and apply for an injunction against the defendant until 24 November 1992, some five years after the order for sale. The only reason given by the plaintiff was that he did not know of the order for sale until he was informed of it on 31 July 1992 by a friend. I must say that this explanation is a very curious one indeed, bearing in mind that the plaintiff was close enough to his father to have been asked by him to settle his debt to the defendant. How could he not, in the circumstances, know that his father was summoned to attend the Collector's Inquiry or that the auction was delayed to give his father time to settle his debt. By his own admission he was fully aware of the banking procedures, yet how could he not have queried the defendant on the fate of the land after he had made payment to the defendant as claimed by him? In short, the plaintiff's explanation for the delay was far from satisfactory.

In *Cocoa Processors Sdn. Bhd. v. United Malayan Banking Corporation Bhd. & Ors.* [1988] 3 MLJ 491, it was held that a delay of eleven months without a satisfactory explanation did not entitle the plaintiff to the assistance of the Court.

Similarly here, the delay of over five years would be another ground for my refusing the injunction.

For the reasons stated above, the application is dismissed with costs.

JAYAGOPAL A/L ADAIKKALAM

v.

SUBRAMANIAM A/L MUTHUSAMY & 2 ORS.

HIGH COURT MALAYA, ALOR SETAR
TUAN HJ. MOHD NOOR BIN HJ. ABDULLAH J.
[ORIGINATING SUMMONS NO. 24-810-93]
19 FEBRUARY 1994

PRACTICE & PROCEDURE: Plaintiff's application for directions, interim injunction and declaration - Defendants raising preliminary objections - Plaintiff's action commenced by originating summons - Whether action should have been commenced by writ of summons - Whether plaintiff had the locus standi to bring the action - Plaintiff obtaining interim injunction by summons in chambers - Plaintiff failing to give undertaking as to damages in the order granting interim injunction - Whether order void - Plaintiff member of society - Whether plaintiff had to exhaust his domestic remedies before seeking relief from the Court.

SOCIETIES: Plaintiff member of society - Plaintiff alleging management committee unlawful as defendants failed to hold annual general meeting of society according to its rules - Allegation of mismanagement and misappropriation of society's funds - Refusal to accept renewal of plaintiff's membership - Application of the principles applicable to trade unions and political parties to a society - Consideration of s. 45 of the Trade Union Ordinance 1959 - Section 49 of the Co-operative Society Ordinance 1948 - Section 40 Societies Act 1966.

The plaintiff was an ordinary member and the defendants were the chairman and secretary respectively of the management committee of the Sri Maha Mariamman Devasthanam Temple, Alor Setar (the Society). The plaintiff applied by originating summons for *inter alia* an interim injunction restraining the management committee from managing or administering the temple and for a direction that the management committee hand over the administration of the temple to the trustees. The plaintiff further applied for a declaration that the management committee was unlawful on the basis that the defendants had failed to hold the annual general meeting in accordance with the rules of the Society and also alleged *inter alia* that the defendants mismanaged the Society, had